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**IN THE
COURT OF APPEALS OF INDIANA**

JOSHUA B. WILD,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 40A05-0708-CR-474

APPEAL FROM THE JENNINGS CIRCUIT COURT
The Honorable Jon W. Webster, Judge
Cause No. 40C01-0505-FC-110

May 30, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Joshua B. Wild appeals after a jury convicted him of two counts of reckless homicide,¹ each as a Class C felony, two counts of failure to stop after an accident resulting in death,² each as a Class C felony, and one count of failure to stop after an accident resulting in serious bodily injury³ as a Class D felony. Wild raises three issues, which we restate as:

- I. Whether the DNA evidence was properly admitted when the items were seized without a warrant.
- II. Whether there was sufficient evidence to prove Wild was the driver of the vehicle involved in the accident.
- III. Whether the trial court properly denied Wild's motion to discharge under Indiana Criminal Rule 4.

We affirm.

FACTS AND PROCEDURAL HISTORY

On the evening of May 7, 2005, Wild had some guests at his home in North Vernon, Indiana. Most were drinking alcohol. At 2:00 a.m., Wild decided to drive into town, and told his friend Regina (Perry) Austrera that he was leaving to get some more drinks. *Tr.* 382-84. Wild left the residence with his friend, Jason York, as the passenger. Wild picked up Ashley Beatty and Stacie Wilder. Wild then proceeded down U.S. Highway 50 at a speed of more than 80 miles per hour. York warned him that he should slow down because they had been drinking, and if they got pulled over, they would likely go to jail. *Id.* at 391. Wild ignored York's plea and increased the car's speed to over 90 miles per hour. York testified

¹ See IC 35-42-1-5.

² See IC 9-26-1-8(a)(2).

³ See IC 9-26-1-8(a)(1)(A).

that the last thing he could remember was a noise coming from the back of the car, and that he next remembered waking up in a hospital in Louisville.

Around 4:00 a.m. on May 8, Fred Morrow arrived at his place of employment on U.S. Highway 50 and saw an overturned vehicle lying off the highway in front of the building. Morrow approached the vehicle, found two dead females and saw York lying in the gravel parking lot yelling for Wild. Morrow flagged down a passing car and directed the driver to call 9-1-1. Morrow then returned to the vehicle and saw several open beer bottles scattered throughout the back of the overturned vehicle. Morrow then went back to check on York, who told Morrow that there was someone else with them, but Wild was nowhere to be found. Minutes later, emergency medical technicians (“EMTs”) arrived on the scene and confirmed both girls were dead.

In the meantime, Wild returned to his home, told Austra that he knew that Wilder and Beatty were dead, that he was driving and that he had to get out of the state. *Id.* at 797-99. Austra later went to the Sheriff’s Department and informed the officers of her conversation. *Id.* at 802-04. Wild fled to his uncle’s house in Columbus, Indiana. Wild’s uncle, Ron Lawson, noticed his injuries and questioned him as to what happened. Wild acknowledged that he was in an automobile accident and that someone had died. Lawson asked Wild if he had gone to the hospital, and Wild responded that he first wanted to talk to an attorney. *Id.* at 839. After hearing this, Lawson called the Sheriff’s Department, and later, Wild was apprehended.

An accident reconstructionist, Deputy Anthony Mayberry, recovered biological substances from the driver’s side airbag of Wild’s vehicle that were confirmed to be from

Wild. *Id.* at 740-41. Deputy Mayberry also concluded that Wild's vehicle was traveling between 92-96 miles per hour at the time of the accident. *Id.* at 892-93.

The State charged Wild with two counts of reckless homicide, two counts of failing to stop after an accident resulting in death and one count of leaving the scene of an accident involving serious injury. Following a jury trial, Wild was convicted on all counts. He now appeals. Additional facts will be added as necessary.

DISCUSSION AND DECISION

I. Search of the Vehicle

Wild contends that the trial court abused its discretion in allowing the introduction of the biological evidence recovered by Deputy Mayberry from his vehicle. Specifically, Wild claims that his federal and state constitutional rights against illegal searches and seizures were violated when the police took a sample of blood residue from the airbag within his vehicle because there was no warrant to search the vehicle. U.S. Const. amend. IV; Ind. Const. art. 1, Sec. 11.

The trial court has broad discretion on ruling on the admissibility of evidence. *Campbell v. State*, 841 N.E.2d 624, 627 (Ind. Ct. App. 2006). We may only reverse the trial court's ruling if it is clearly against the logic and effect of the facts and circumstances before the trial court. *Id.* Here, after the accident, Wild fled the scene and abandoned his vehicle. The Fourth Amendment does not protect against the search and seizure of an individual's abandoned property unless the individual was illegally detained prior to the abandonment. *Id.* (citing *Wilson v. State*, 825 N.E.2d 49, 51 (Ind. Ct. App. 2005)). Because Wild was not detained prior to his abandonment of the vehicle, there was no illegal search of the vehicle.

Wild argues that even if the search of an abandoned vehicle is permitted, it is limited to a search for the certificate of registration. *See Muegel v. State*, 257 Ind. 146, 151, 272 N.E.2d 617, 620 (1971). However, *Muegel* states that “[a]ny articles or things observed in the course of such a search may be seized and used as evidence in a criminal proceeding,” i.e. blood residue. *Id.* Moreover, even if the trial court abused its discretion in admitting Wild’s blood residue recovered from inside the vehicle, the error was harmless, because the evidence from which it could be inferred Wild was the driver of the vehicle was cumulative of other evidence admitted at trial. *See Payne v. State*, 854 N.E.2d 7, 17 (Ind. Ct. App. 2006).

II. Sufficiency of the Evidence

Wild contends that there was insufficient evidence to support the fact that he was the driver of his vehicle, and that, without that element, the two counts of reckless homicide and three counts of failure to stop after an accident must be reversed. Our standard of review for sufficiency of the evidence claims is well settled – we do not reweigh the evidence or judge the credibility of the witness; we only look to determine whether there was sufficient evidence of probative value for the trier of fact to conclude that the defendant was guilty of the charged offense. *Barber v. State*, 863 N.E.2d 1199, 1203 (Ind. Ct. App. 2007), *trans. denied*.

The record before us reveals that at trial York identified Wild as the driver. *Tr.* at 384, 482. Prior to leaving to pick up Wilder and Beatty, Wild told his friend Austra that he was going to drive, and Austra observed him behind the wheel. *Tr.* at 780-81, 791. After the accident, Wild told Austra that he was driving. Further, the evidence that Wild fled the scene after the crash, told his friends that he had to get out of the state, and fled to his uncle’s house

also support an inference of his consciousness of guilt. *Tr.* at 799; *Jacobs v. State*, 802 N.E.2d 995, 998 (Ind. Ct. App. 2004) (citing *Gee v. State*, 526 N.E.2d 1152, 1554 (Ind. 1998)). Wild's assertion is an invitation to reweigh the evidence and judge the credibility of the witnesses, which we cannot do. There was sufficient evidence to support Wild's convictions.

III. Discharge for Delay

Finally, Wild claims that the trial court erred in denying his motion for discharge under Indiana Criminal Rule 4(C). The Sixth Amendment to the United States Constitution and Article I, Section 12 of the Indiana Constitution guarantees the accused a right to speedy trial. Indiana Criminal Rule 4(C) provides:

Defendant Discharged. No person shall be held on recognizance or otherwise to answer a criminal charge for a period in aggregate embracing more than one year from the date the criminal charge against such defendant is filed, or from the date of his arrest on such charge, whichever is later; except where a continuance was had on his motion, or the delay was caused by his act, or where there was not sufficient time to try him during such period because of congestion of the court calendar; Provided further, that a trial court may take note of congestion or an emergency without the necessity of a motion, and upon so finding may order a continuance. Any continuance granted due to a congested calendar or emergency shall be reduced to an order, which order shall also set the case for trial within a reasonable time. Any defendant so held shall, on motion, be discharged.

And, Indiana Criminal Rule 4(F) provides:

Time period extended. When a continuance is had on motion of the defendant, or delay in trial is caused by his act, any time limitation contained in this rule shall be extended by the amount of the resulting period of such delay caused thereby.

In reviewing a trial court's findings regarding a motion for discharge under Indiana Criminal Rule 4(C), this court applies a clearly erroneous standard. *Paul v. State*, 799 N.E.2d

1194, 1197 (Ind. Ct. App. 2003). Under a clearly erroneous standard, we will neither reweigh the evidence nor judge the credibility of the witnesses. *Id.* We will only consider the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. *Id.* We will only reverse upon a clear showing of error, or error that leaves us certain that a mistake was made. *Id.*

On May 19, 2005, the State charged Wild with two counts of leaving the scene of an accident causing death and one count of leaving the scene of an accident causing serious bodily injury. *Appellant's App.* at 45-48. On June 21, 2005, the State amended its charging information to include, in addition to the three existing charges, two counts of reckless homicide. *Id.* at 68.

On February 22, 2006, Wild made several motions including a motion for change of venue. *Id.* at 94, 98. Wild based his motion for change of venue on the publicity of the case and Jennings County's "pervasive prejudice against him." *Id.* at 98. On September 12, 2006, Wild rescinded his motion for change of venue. *Tr.* at 59. Then, on March 30, 2006, Wild filed a motion for continuance of the April 24, 2006 trial setting, setting out that he needed more time to investigate certain evidence, some of which was not yet provided by the State, and that plea negotiations were under way.

A defendant's motion for change of venue or motion for continuance is a delay attributable to the defendant and tolls the running of the time for speedy trial purposes. *See State v. Jackson*, 857 N.E.2d 378, 380 (Ind. Ct. App. 2006) (citing *State v. Mabrey*, 199 Ind. 276, 278, 157 N.E.2d 97, 98 (1927)).

Here, when Wild filed his motion for change of venue, 279 days had elapsed since the charges were filed, and 86 days remained during which Wild could be tried. The motion for change of venue tolled the running of the one-year period. Accordingly, when Wild filed his motion for continuance on March 30, 2006, the same 86 days remained. In response to Wild's motion for continuance, the trial court granted the motion and reset the trial for November 27, 2006. All of the time from February 22, 2006 to November 27, 2006 was chargeable to Wild, and the trial setting of November 27, 2006, was well within the one-year period provided in Indiana Criminal Rule 4(C). Thus, Wild's motion for discharge filed October 27, 2006 and amended motion filed November 13, 2006 were premature and the trial court correctly denied both motions.

In his amended motion for discharge, Wild also moved for a continuance of the November 27, 2006 trial setting. The trial court granted the motion and reset the trial for March 5, 2007. Wild contends that the motion was necessitated by the State's failure to provide certain discovery and that the time after the November 27 should be chargeable to the State. The fact that the trial court ordered the State to produce certain discovery on or before November 30, 2006 supports Wild's claim. Wild, however, never objected to the March 5, 2007 setting.

If within the allotted time for trial, the court schedules a trial beyond the deadline, the defendant's failure to object amounts to a waiver of his claim that the new trial date is beyond the time limit. *State ex rel. Henson v. Washington Circuit Court*, 514 N.E.2d 838, (Ind. 1987); *Morrison v. State*, 555 N.E.2d 458, 461 (Ind. 1990). By failing to object to the March

trial setting, Wild acquiesced in the March 5, 2007 trial date and waived any claim that the setting was beyond the time limit.

Affirmed.

RILEY, J., and MAY, J., concur.